

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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IN RE: 3M COMBAT ARMS EARPLUG	)	
PRODUCTS LIABILITY LITIGATION,	)	
<hr/>	)	
LUKE ESTES,	)	
	)	
<i>Plaintiff-Appellee,</i>	)	No. 21-13135
	)	
v.	)	
	)	
3M COMPANY, ET AL.,	)	
	)	
<i>Defendants-Appellants.</i>	)	
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**UNOPPOSED MOTION TO CONSOLIDATE  
APPEAL NOS. 21-13131, 21-13133, AND 21-13135**

Pursuant to Federal Rule of Appellate Procedure 3(b)(2) and Local Rule 27-1, Defendants move that the Court consolidate Appeal Nos. 21-13131, 21-13133, and 21-13135 (the *Keefer*, *Hacker*, and *Estes* appeals, respectively), all of which arise from a single, consolidated trial.

1. The Judicial Panel on Multi-District Litigation consolidated personal-injury actions relating to the Combat Arms earplugs in the Northern District of Florida in April 2019. MDL Dkt. 1. Plaintiffs Keefer, Hacker, and Estes registered their claims and joined a tolling agreement with Defendants later that year, and their cases were selected for the “initial bellwether pool” on February 27, 2020. MDL Dkt. 1015 at 1.

2. The district court consolidated the *Keefer*, *Hacker*, and *Estes* cases for the first bellwether trial, held from March 30 to April 29, 2021. MDL Dkt. 1583. The trial resulted in a verdict for the three plaintiffs, with a total damages award of approximately \$7.1 million. *See Keefer* Dkt. 186; *Hacker* Dkt. 202; *Estes* Dkt. 184.

3. Judicial economy, efficiency for the litigants, and the interests of justice favor consolidation of the *Keefer*, *Hacker*, and *Estes* appeals for briefing and argument.

4. This Court routinely consolidates appeals from a single, consolidated trial. *See, e.g., L.M.P., on Behalf of E.P. v. School Bd. of Broward Cnty.*, 879 F.3d 1274 (11th Cir. 2018). Here, the *Keefer*, *Hacker*, and *Estes* appeals all arise from a single, consolidated trial and thus all of the issues, including the evidentiary ones, are the same in each appeal.

5. Counsel for Plaintiffs in *Keefer*, *Hacker*, and *Estes* has informed Defendants that Plaintiffs do not oppose consolidation.

### **CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court consolidate the *Keefer*, *Hacker*, and *Estes* appeals for briefing and argument.

Respectfully submitted,

s/Paul D. Clement

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October 28, 2021

**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rule 26.1-1, counsel for Defendants-Appellants 3M Company, 3M Occupational Safety LLC, Aearo Holdings LLC, Aearo Intermediate LLC, Aearo Technologies LLC, and Aearo, LLC hereby certifies that the following is a complete list of the trial judge(s), all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the particular case on appeal, including subsidiaries, conglomerates, affiliates, and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party:

- 3M Company (**MMM**) – Defendant-Appellant
- 3M Occupational Safety LLC – wholly owned subsidiary of Defendant-Appellant 3M Company
- Aearo Holdings LLC – wholly owned subsidiary of Defendant-Appellant 3M Company
- Aearo Intermediate LLC – wholly owned subsidiary of Defendant-Appellant 3M Company
- Aearo Technologies LLC – wholly owned subsidiary of Defendant-Appellant 3M Company
- Aearo, LLC – wholly owned subsidiary of Defendant-Appellant 3M

Company

- Aylstock Witkin Kreis & Overholtz – counsel for Plaintiff-Appellee
- Aylstock, Bryan Frederick – counsel for Plaintiff-Appellee
- Barr, Brian H. – counsel for MDL Plaintiffs
- Beall, Charles Franklin, Jr. – counsel for Defendants-Appellants
- Benton, Diana Clough – counsel for Defendants-Appellants
- Bhimani, Jay L. – counsel for Defendants-Appellants
- Bouk, Winston Troy – counsel for MDL Plaintiffs
- Bradley Arant Boult Cummings – counsel for Defendant-Appellant 3M

Company

- Branscome, Kimberly O. – counsel for Defendants-Appellants
- Brock, Robert C. – counsel for Defendants-Appellants
- Brown & James – counsel for Plaintiff-Appellee
- Brown, Micah David – counsel for Defendants-Appellants
- Buchanan, David R. – counsel for Plaintiff-Appellee
- Burns, Michael A. – counsel for MDL Plaintiffs
- Buxner, Evan D. – counsel for MDL Plaintiffs
- Carter, Cole T. – counsel for Defendants-Appellants
- Cartmell, Thomas P. – counsel for MDL Plaintiffs
- Castiglia, Craig – counsel for Defendants-Appellants

- Ciresi Conlin LLP – counsel for Plaintiff-Appellee
- Clark Love & Hutson – counsel for Plaintiff-Appellee
- Clement, Paul D. – counsel for Defendants-Appellants
- Cooper, David M. – counsel for Plaintiff-Appellee
- Cornell, Katherine Lindsey – counsel for MDL Plaintiffs
- Czak, Steven C. – counsel for Defendants-Appellants
- DeCamp, Kyle Richard – counsel for Defendants-Appellants
- Dechert LLP – counsel for Defendants-Appellants
- De Paulo, Tabitha J. – counsel for Defendants-Appellants
- Elizabeth, Sierra – counsel for Defendants-Appellants
- Ellis, Robert P. – counsel for Defendants-Appellants
- Esfandiarifard, Saghar – counsel for Defendants-Appellants
- Estes, Luke – Plaintiff-Appellee
- Fields, Barry E. – counsel for Defendants-Appellants
- Fox, Shawn – counsel for Plaintiff-Appellee
- Gibney, Blake – counsel for Defendants-Appellants
- Glass, David M. – counsel for the United States of America
- Gori Julian & Associates – counsel for MDL Plaintiffs
- Gottlieb, Simon – counsel for Defendants-Appellants

- Gunderson, Karl B. – counsel for Defendants-Appellants
- Hacker, Stephen – Plaintiff-Appellee
- Hill, Thomas Larry – counsel for Defendants-Appellants
- Hodge, Leigh Anne – counsel for Defendant-Appellant 3M Company
- Hoekstra, Jennifer M. – counsel for MDL Plaintiffs
- Hutson, Shelley Van Natter – counsel for Plaintiff-Appellee
- Jones, Hon. Gary R. – U.S. Magistrate Judge for the Northern District of Florida
- Karis, Hariklia – counsel for Defendants-Appellants
- Keefer, Lewis – Plaintiff-Appellee
- Kelly, Maxwell H. – counsel for Plaintiff-Appellee
- Kim, Mary H. – counsel for Defendants-Appellants
- Kirkland & Ellis LLP – counsel for Defendants-Appellants
- Kolsky, Joshua M. – counsel for the United States of America
- Kreis, Douglass A. – counsel for Plaintiff-Appellee
- Laminack Pirtle & Martines – counsel for MDL Plaintiffs
- Leach, Garret A. – counsel for Defendants-Appellants
- Leuthauser, Nolan M. – counsel for Defendants-Appellants
- Levin Papantonio Rafferty – counsel for MDL Plaintiffs
- Marlowe, Emily B. – counsel for Plaintiff-Appellee

- Mitchell, Kasdin – counsel for Defendants-Appellants
- Morriss, F. Chadwick – counsel for Defendants-Appellants
- Mostyn Law – counsel for MDL Plaintiffs
- Moore Hill & Westmoreland – counsel for Defendants-Appellants
- Neglia, Ashley E. – counsel for Defendants-Appellants
- Nomellini, Mark J. – counsel for Defendants-Appellants
- O’Callaghan, Orla – counsel for Defendants-Appellants
- Odom, Megan L. – counsel for Plaintiff-Appellee
- Onder Law LLC – counsel for MDL Plaintiffs
- Overholtz, Neil D. – counsel for MDL Plaintiffs
- Ozurovich, Allison K. – counsel for Defendants-Appellants
- Pirtle, Thomas W. – counsel for MDL Plaintiffs
- Pulaski Law Firm – counsel for MDL Plaintiffs
- Quinn Emanuel Urquhart & Sullivan LLP – counsel for Plaintiff-Appellee
- Rafferty, Troy Alan – counsel for MDL Plaintiffs
- Rivera, Maria P. – counsel for Defendants-Appellants
- Rodgers, Hon. M. Casey – U.S. District Judge for the Northern District of Florida
- Sacchet, Michael A. – counsel for Plaintiff-Appellee



- Sandman, Patrick P. – counsel for Defendants-Appellants
- Seeger, Christopher A. – counsel for MDL Plaintiffs
- Seeger Weiss LLP – counsel for Plaintiff-Appellee
- Seeley, Caleb A. – counsel for Plaintiff-Appellee
- Tam, Jonathan S. – counsel for Defendants-Appellants
- Tracey Fox King & Walters – counsel for Plaintiff-Appellee
- Tracey, Sean Patrick – counsel for Plaintiff-Appellee
- Van Fleteren, Haley J. – counsel for Defendants-Appellants
- Wagstaff & Cartmell – counsel for MDL Plaintiffs
- Wasdin, Nicholas F. – counsel for Defendants-Appellants
- Wilson, Quinn Robert – counsel for MDL Plaintiffs

Defendant-Appellant 3M Company states that it is a corporation whose shares are publicly traded (NYSE: **MMM**). 3M Company does not have a parent corporation and no publicly held corporation owns 10% or more of 3M's stock.

Defendant-Appellants 3M Occupational Safety LLC, Aearo Holdings LLC, Aearo Intermediate LLC, Aearo Technologies LLC, and Aearo, LLC state that they are wholly owned subsidiaries of Defendant-Appellant 3M Company.

Respectfully submitted,

s/Paul D. Clement

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*Counsel for Defendant-Appellants*

**CERTIFICATE OF COMPLIANCE  
WITH TYPE-VOLUME LIMITATION**

I hereby certify that:

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 296 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point font.

October 28, 2021

s/Paul D. Clement  
Paul D. Clement

## **CERTIFICATE OF SERVICE**

I hereby certify that on October 28, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Paul D. Clement  
Paul D. Clement